

**United States Department of Labor
Employees' Compensation Appeals Board**

D.B., Appellant))
))
and)	Docket No. 24-0237
U.S. POSTAL SERVICE, CASTAIC POST OFFICE, Santa Clarita, CA, Employer)	Issued: May 7, 2024
))

Appearances:
Appellant, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 8, 2024 appellant filed a timely appeal from a December 28, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a back condition causally related to the accepted August 23, 2023 employment incident.

FACTUAL HISTORY

On September 6, 2023 appellant, then a 61-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained an injury to his back due to factors of his

¹ 5 U.S.C. § 8101 *et seq.*

federal employment. He noted that he first became aware of his claimed condition on August 23, and that it was related to his federal employment on August 24, 2023.

In an August 31, 2023 work activity status report, Dr. Carlos R. Garrett, a Board-certified internist, diagnosed lumbar strain, lateral pain of right hip. He noted a history of overexertion and strenuous repetitive movements or loads. Dr. Garrett related that appellant could return to modified work.

In an August 29, 2023 statement, appellant noted that his regular work vehicle had broken down and he had to use another one. He alleged that he hurt his back while pulling on a ramp. Appellant informed his supervisor and kept working as he thought the pain would go away.

In a development letter dated September 14, 2023, OWCP notified appellant that it had received his claim; however, additional evidence was needed. It explained that it appeared that he was claiming a traumatic injury (Form CA-1), rather than an occupational disease. OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

August 31, 2023 x-rays of the right hip and of the lumbosacral spine read by Dr. Martin Price, Board-certified in diagnostic radiology, revealed normal findings.

In an August 31, 2023 state form report, Dr. Jamileh Hanna, an internist, noted that appellant was a driver and was seen for an August 23, 2023 onset of lumbar and right hip pain. She diagnosed lumbar strain, and lateral right hip pain. Dr. Hanna again noted that appellant had engaged in overexertion and strenuous repetitive movements or loads. In a September 18, 2023 report, she reiterated her prior assessment. Dr. Hanna saw appellant on October 4, 2023, released him from care, and opined that he could return to full duty.

OWCP received August 31 and October 4, 2023 reports from Constance Robinson, a nurse practitioner. In the August 31, 2023 report, Ms. Robinson related that appellant was seen for an injury sustained on August 23, 2023. On that date, appellant was at work when he began to feel discomfort in the lower back and right hip. He related that his discomfort increased with pushing, pulling, and pulling heavy loads. An assessment was provided of lumbar strain and right hip lateral pain. In the October 4, 2023 report, Ms. Robinson related that appellant requested release from care, and that he was released to full duty with no restrictions.

In a September 7, 2023 report, Crystal Bakhaj, a physician assistant, related that appellant was seen that day for follow up of low back and righthip pain. She noted appellant's ongoing pain complaints and assessed lumbar strain and right hip pain.

OWCP also received September 14, 18, and 25, 2023 reports from physical therapists, who related that appellant was a mail driver and on August 23, 2023, he hurt his back and right hip while pulling a broken ramp on a truck.

On December 12, 2023 OWCP received an undated statement, wherein appellant related that on August 19, 2023 his regular truck broke down and supervisor D. gave him another truck to drive. Appellant noted that he told his supervisor, "I cannot use the new truck because it has a different liftgate as well as a different ramp." He explained that the ramp on the truck supervisor

D. gave him had been broken for years and he had to use all his strength to manually pull up the ramp every time he used it. Appellant noted that he took a video of himself operating the ramp to show supervisor D. how difficult it was, but supervisor D. did not pay any attention to him or his safety concern. He related that a few days later, on August 23, 2023, he injured his back.

In a December 16, 2023 statement, appellant indicated that he experienced a traumatic injury on August 23, 2023. He explained that during his shift on Wednesday, August 23, 2023, he was unloading the truck with a broken ramp onto the dock and strained his lower back causing immense pain. Appellant noted that he had to manually pull the ramp over the liftgate to unload the packages, whereas normally the ramp ran automatically, and no lifting was required. He related that he had to continue to manually pull the ramp during this the entire day which caused his injury.

By decision dated December 28, 2023, OWCP denied appellant's claim. It found that the medical evidence did not establish that his diagnosed back condition was causally related to the accepted August 23, 2023 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁶

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.⁷ The opinion of the physician must be based on a complete factual and medical

² *Supra* note 1.

³ See *Y.S.*, Docket No. 22-1142 (issued May 11, 2023); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted August 23, 2023 employment incident.

OWCP received reports from Dr. Garrett and Dr. Hanna dated August 31 and September 18, 2023 which related assessments of lumbar strain, and right hip pain. The Board has held that pain is a symptom and not a compensable medical diagnosis.⁹ While these reports also noted assessments of overexertion and strenuous repetitive movements or loads, they did not explain a pathophysiological process of how any of appellant's accepted work incident on August 23, 2023 caused or contributed to his diagnosed back condition.¹⁰ The Board has held that a medical opinion that does not offer a medically-sound and rationalized explanation by the physician of how the accepted employment incident or factors physiologically caused or aggravated the diagnosed condition is of limited probative value.¹¹ The Board finds that these reports are therefore insufficient to establish appellant's claim.

The record also contains reports from a nurse practitioner, physician assistant, as well as physical therapy reports. However, certain healthcare providers such as nurse practitioners, physician assistants, and physical therapists are not considered physicians as defined under FECA.¹² Consequently, the Board finds that these reports are insufficient to establish entitlement to FECA benefits.

OWCP also received August 31, 2023 x-rays of the right hip and spine. However, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship, as they do not provide an opinion as to whether the accepted employment incident

⁸ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ See *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

¹⁰ *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *J.C.*, Docket No. 18-1474 (issued March 20, 2019); *M.M.*, Docket No. 15-0607 (issued May 15, 2015); *M.W.*, Docket No. 14-1664 (issued December 5, 2014).

¹¹ *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

¹² 5 U.S.C. § 8101(2) provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law, 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1)(May 2023); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA); *M.F.*, Docket No. 19-1573 (issued March 16, 2020) (physician assistants and nurse practitioners are not considered physicians as defined by FECA); *N.B.*, Docket No. 19-0221 (issued July 15, 2019) (physician assistants are not considered physicians under FECA); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

caused a diagnosed condition.¹³ Consequently, this evidence is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a back condition causally related to the accepted August 23, 2023 employment incident, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a back condition causally related to the accepted August 23, 2023 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹³ W.L., Docket No. 20-1589 (issued August 26, 2021); A.P., Docket No. 18-1690 (issued December 12, 2019).